

Developmental Disabilities Council

Reading Cover Page

Date: July 24, 2006

Meeting: Public Policy Committee

Reading Number: **06-P9**

Issue: **Public Guardianship**

Included in this Reading:

- Proposed bill by Columbia Legal Services to establish a state Office of Public Guardianship
- Resolution on Public Guardianship by WPAS asking for organizational support of appropriate components of a public guardianship system

Background/Summary:

There are various legitimate issues around guardianship that this proposal is attempting to address. However, there are people/organizations who feel this bill is not necessarily reflective of DD needs specifically.

Action:

Discuss and VOTE on support of the proposed concept and legislation.

If there are any questions, please contact Donna Patrick at 1-800-634-4473 or donnap@cted.wa.gov

BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #: H-0007.3/07 3rd draft

ATTY/TYPIST: RJS:rmh

BRIEF DESCRIPTION: Creating an office of public guardianship as an independent agency of the judiciary.

1 AN ACT Relating to creating an office of public guardianship as an
2 independent agency of the judiciary; and adding a new chapter to Title
3 2 RCW.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** In establishing an office of public
6 guardianship, the legislature intends to promote the availability of
7 guardianship services for individuals who need them and for whom
8 adequate services may otherwise be unavailable. The legislature
9 reaffirms its commitment to treat liberty and autonomy as paramount
10 values for all Washington residents and to authorize public
11 guardianship only to the minimum extent necessary to provide for health
12 or safety, or to manage financial affairs, when the legal conditions
13 for appointment of a guardian are met. It does not intend to alter
14 those legal conditions or to expand judicial authority to determine
15 that any individual is incapacitated.

16 NEW SECTION. **Sec. 2.** The definitions in this section apply
17 throughout this chapter unless the context clearly requires otherwise.

18 (1) "Office" means the office of public guardianship.

1 (2) "Professional staff member" means a certified professional
2 guardian, a certified public accountant, a lawyer, or an individual
3 with an advanced degree in social work or psychology.

4 (3) "Public guardian" means an individual or entity providing
5 public guardianship services.

6 (4) "Public guardianship services" means the services provided by
7 a guardian or limited guardian appointed under chapters 11.88 and 11.92
8 RCW, who is compensated under a contract with the office of public
9 guardianship.

10 NEW SECTION. **Sec. 3.** (1) There is created an office of public
11 guardianship as an independent agency of the judicial branch.

12 (2) The supreme court shall appoint a public guardianship
13 administrator to establish and administer a public guardianship program
14 in the office of public guardianship. The public guardianship
15 administrator serves at the pleasure of the supreme court.

16 NEW SECTION. **Sec. 4.** The public guardianship administrator is
17 authorized to establish and administer a public guardianship program as
18 follows:

19 (1)(a) The office shall contract with public or private entities or
20 individuals to provide public guardianship services to persons age
21 eighteen or older whose income does not exceed two hundred percent of
22 the federal poverty level determined annually by the United States
23 department of health and human services or who are receiving long-term
24 care services through the Washington state department of social and
25 health services. Neither the public guardianship administrator nor the
26 office of public guardianship may act as public guardian or limited
27 guardian or act in any other representative capacity for any
28 individual.

29 (b) The office of public guardianship is exempt from RCW 39.29.008
30 because the primary function of the office is to contract for public
31 guardianship services that are provided in a manner consistent with the
32 requirements of this chapter. The office of public guardianship shall
33 otherwise comply with chapter 39.29 RCW and is subject to audit by the
34 state auditor.

35 (c) Public guardianship service contracts are dependent upon

1 legislative appropriation. This chapter does not create an
2 entitlement.

3 (d) The initial implementation of public guardianship services
4 shall be on a pilot basis in a minimum of two geographical areas that
5 include one urban area and one rural area. There may be one or several
6 contracts in each area.

7 (2) The office shall, within one year of the commencement of its
8 operation, adopt eligibility criteria to enable it to serve individuals
9 with the greatest need when the number of cases in which courts propose
10 to appoint a public guardian exceeds the number of cases in which
11 public guardianship services can be provided. In adopting such
12 criteria, the office may consider factors including, but not limited
13 to, the following: Whether an incapacitated individual is currently in
14 imminent danger of abuse, exploitation, abandonment, or neglect; and
15 whether an incapacitated person is in imminent danger of loss or
16 significant reduction in public services that are necessary for the
17 individual to live successfully in the most integrated and least
18 restrictive environment that is appropriate in light of the
19 individual's needs and values.

20 (3) The office may adopt minimum standards of practice for public
21 guardians providing public guardianship services. Any public guardian
22 providing such services must be certified by the certified professional
23 guardian board established by the supreme court.

24 (4) The office shall require a public guardian or a professional
25 staff member working under a public guardian's supervision to visit
26 each incapacitated person for which public guardianship services are
27 provided no less than monthly to be eligible for compensation.

28 (5) The office shall not petition for appointment of a public
29 guardian for any individual. It may develop a proposal for the
30 legislature to make affordable legal assistance available to petition
31 for guardianships.

32 (6) The office shall not authorize payment for services for any
33 entity that is either serving more than twenty incapacitated persons
34 per professional staff member or that is serving more than forty
35 incapacitated persons per public guardian.

36 (7) The office shall track cost savings to the state and report the
37 amount every two years to the legislature and the governor. The office

1 shall monitor and oversee the use of state funding to ensure compliance
2 with this chapter.

3 (8) The office shall collect uniform and consistent basic data
4 elements regarding service delivery. This data shall be made available
5 to the legislature and supreme court in a format that is not
6 identifiable by individual incapacitated person to protect
7 confidentiality.

8 (9) The office shall explore, and report to the legislature on, how
9 services other than guardianship services, and in particular services
10 that might reduce the need for guardianship services, might be provided
11 under contract with the office or otherwise expanded. The services to
12 be explored should include, but not be limited to, services provided
13 under powers of attorney given by the individuals in need of the
14 services.

15 (10) The office shall submit a biennial budget request.

16 (11) The office shall require public guardianship providers to seek
17 reimbursement of fees from program clients who are receiving long-term
18 care services through the department of social and health services to
19 the extent, and only to the extent, that such reimbursement may be
20 paid, consistent with an order of the superior court, from income that
21 would otherwise be required by the department to be paid toward the
22 cost of the client's care. Fees reimbursed shall be remitted by the
23 provider to the office of public guardianship unless a different
24 disposition is directed by the public guardianship administrator.

25 (12) The office shall require public guardianship providers to
26 certify annually that for each individual served they have reviewed the
27 need for continued public guardianship services and the appropriateness
28 of limiting, or further limiting, the authority of the public guardian
29 under the applicable guardianship order, and that where termination or
30 modification of a guardianship order appears warranted, the superior
31 court has been asked to take the corresponding action.

32 (13) The office shall adopt a process for receipt and consideration
33 of and response to complaints against the office and contracted
34 providers of public guardianship services. The office shall provide
35 the advisory committee with a summary and analysis of the results of
36 these complaints. When requested by the complaining party, his or her
37 identity shall not be disclosed to the advisory committee.

1 (14) The office shall contract with the Washington state institute
2 for public policy for a study covering the first four years of its
3 operation. An initial report is due two years following the effective
4 date of this section and a second report two years later. The study
5 shall analyze costs and off-setting savings to the state from the
6 delivery of public guardianship services.

7 (15) The office may develop standardized forms and reporting
8 instruments that may include, but are not limited to, intake, initial
9 assessment, care plan, decisional accounting, staff time logs, changes
10 in condition or abilities of an incapacitated person, and values
11 history.

12 (16) The office may offer training to individuals providing
13 services pursuant to this chapter.

14 NEW SECTION. Sec. 5. (1) There is created a public guardianship
15 advisory committee consisting of the following members:

16 (a) Two persons appointed by the supreme court;

17 (b) Two persons appointed by the board for judicial administration;

18 (c) Two senators, one from each of the two largest caucuses,
19 appointed by the president of the senate; and two members of the house
20 of representatives, one from each of the two largest caucuses,
21 appointed by the speaker of the house of representatives;

22 (d) One person appointed by the governor;

23 (e) One person appointed by the secretary of the department of
24 social and health services;

25 (f) One person appointed by the director of the Washington
26 protection and advocacy system;

27 (g) One person appointed by the chairperson of the governor's
28 committee on disability issues and employment;

29 (h) One person appointed by the chairperson of the developmental
30 disabilities council;

31 (i) One person appointed by the long-term care ombudsman;

32 (j) One person appointed by the Washington state bar association;
33 and

34 (k) One person appointed by the dean of the University of
35 Washington school of social work.

36 (2) During the term of his or her appointment, an appointee may not
37 be employed by a provider of public guardianship services.

1 (3) Except as provided in subsection (4) of this section, members
2 shall each serve a three-year term, subject to renewal for no more than
3 one additional three-year term.

4 (4) The first appointments to the advisory committee shall be for
5 terms of varying durations as follows: By the supreme court for two
6 and four years; by the board for judicial administration for three and
7 four years; by the president of the senate for two and three years; by
8 the speaker of the house of representatives for two and three years; by
9 the governor for four years; by the secretary of the department of
10 social and health services for two years; by the director of the
11 Washington protection and advocacy system for three years; by the
12 chairperson of the governor's committee on disability issues and
13 employment for four years; by the chairperson of the developmental
14 disabilities council for two years; by the long-term care ombudsman for
15 three years; by the Washington state bar association for three years;
16 and by the dean of the University of Washington school of social work
17 for four years.

18 (5) Members of the advisory committee receive no compensation for
19 their services as members of the advisory committee, but may be
20 reimbursed for travel and other expenses in accordance with rules
21 adopted by the office of financial management.

22 (6) The advisory committee: Shall review the activities of the
23 office of public guardianship; shall review the performance of the
24 public guardianship administrator; and may, from time to time, make
25 recommendations to the supreme court, the certified professional
26 guardian board, and the legislature on issues relating to the provision
27 of public guardianship services.

28 (7) The meetings of the advisory committee shall be open to the
29 public, with agendas published in advance and minutes kept and made
30 available to the public. The public notice of all meetings shall
31 indicate that accommodations for disability will be available upon
32 request.

33 NEW SECTION. Sec. 6. The courts shall waive court costs and
34 filing fees in any proceeding in which an incapacitated person is
35 receiving public guardianship services funded under this chapter.

1 NEW SECTION. **Sec. 7.** The state does not waive sovereign immunity
2 for its actions pursuant to this chapter.

3 NEW SECTION. **Sec. 8.** The public guardianship administrator may
4 develop rules to implement this chapter.

5 NEW SECTION. **Sec. 9.** If any provision of this act or its
6 application to any person or circumstance is held invalid, the
7 remainder of the act or the application of the provision to other
8 persons or circumstances is not affected.

9 NEW SECTION. **Sec. 10.** Sections 1 through 9 of this act constitute
10 a new chapter in Title 2 RCW.

--- END ---

Patrick, Donna (CTED)

From: David Lord [davidl@wpas-rights.org]
Sent: Tuesday, August 29, 2006 12:38 PM
To: Grier Jewell; Patrick, Donna (CTED); Holen, Ed (CTED); Kary Hyre; Kary Hyre; Sue Elliott; emily@arcwa.org
Cc: davidlordseattle@aol.com; Betty Schwieterman; Phil Jordan
Subject: public guardianship

Would you please take a look at the attached statement and see if you agree with it and would encourage others to endorse it? Please send me edits or suggestions as soon as possible.

This statement is a response to a resolution supporting the creation of an office of public guardianship. That resolution was circulated by Peter Greenfield and the Elder Law Section of the WSBA, and was endorsed by many organizations (mostly) associated with senior advocacy.

The attached statement indicates some areas that WPAS feels must be addressed in this legislation. We have talked with many other advocates, and these seem to be issues that the disability advocacy community has in common as concerns. We want to have as united a front as possible on these issues, because there is considerable resistance owing to the fact that the safeguards identified in the resolution will result in a need for increased staffing for the Office of Public Guardianship, which will cost money.

Would you please take a look at this and tell me about any edits that you think need to be made? I plan to give it to Donna for circulation to the DDC in their mailing tomorrow. That text indicates that the statement is from WPAS. We would like to have endorsements for this position from you, and other advocates for people with disabilities.

Thanks,
David Lord
WPAS
1-800-562-2702 ext 219

8/30/2006

DRAFT

STATEMENT ON PUBLIC GUARDIANSHIP

Some individuals with disabilities need help with decision-making and advocacy. When less-restrictive alternatives fail to protect an individual, a guardian may be appointed. Sometimes it is difficult to find a volunteer guardian who is qualified and willing to serve as a guardian. This is a serious problem that should be addressed in order to protect the rights and the health and safety of these individuals.

As a response to this concern, a bill has been drafted to create an Office of Public Guardianship. There has not been significant participation by the non-senior disability advocacy community in the development of this proposal until recently. As a response to concerns expressed by the disability advocacy community, there have been some changes to the draft legislation. However, these changes are not currently adequate to ensure that public guardians are adequately trained, supported, and monitored.

Because guardianship is the most restrictive method of protecting the health and safety of individuals who need help with decision-making, alternatives must be considered. We support a broader examination of guardianship and other surrogate decision-making options in Washington State by the Legislature.

Any bill creating a public guardianship system must ensure the following:

1. Independent Authority and Responsibility of the Office of Public Guardianship

The Office of Public Guardianship must be much more than simply a conduit for funding of guardianships. The bill should ensure that the office has the authority to:

- a) stop funding for guardians who fail to provide adequate services, and
- b) recommend that the court remove or replace the guardian.

The bill should identify responsibilities for the Office that will ensure that the guardianships it funds provide quality service and respect individual rights.

2. Adequate Funding and Staff for Office

The office must be adequately staffed to ~~meet~~ perform the duties necessary to meet its obligations.

3. Ratio: 1 to 20

The ratio of guardians to principals must not exceed 1:20. Higher ratios would result in poor service for guardianship clients.

4. Prioritization

Individuals who are being abused, neglected, exploitation or who don't have adequate services to maintain a safe and healthy life in the community should be served first by the limited resources of the Office.

5. Training of Guardians

The training currently provided to certified professional guardians must be supplemented by training designed to ensure effective communication with the

person with the disability. All guardians for people with disabilities must have an understanding of social service options, abuse and rights.

6. Consideration of Less Restrictive Options

Individuals with disabilities are sometimes burdened with guardianships that are not needed or are too restrictive. The Office must monitor the restrictiveness of the guardianships it funds. When appropriate, the Office shall assist with the establishment of less restrictive options (payeeships, powers of attorney, social services, limited guardianships).

7. Monitoring of Guardians

The Office must monitor the performance of the guardians it funds. The Office should require and monitor regular reports from guardians on their client's health and financial status and changes.

8. In person visits

As part of the monitoring process, the Office must visit the clients of its guardians in their homes.

9. Complaint and satisfaction measurement

The Office must create an easy way to make (and resolve) complaints about guardian performance. The satisfaction of clients and their loved ones and other significant individuals should be measured.

10. Collection of Data

The Office must collect information to assess the quality of guardians and the services they provide, as well as the overall effectiveness of the program. The Office must report at least annually to the Legislature on its findings.

11. Public Guardianship Oversight Board

The Public Guardianship Oversight Board must provide meaningful oversight of the Office. It must contain significant representation by people with disabilities and advocates. The Oversight Board must meet often, and review the work of the Office. The Board must create an annual report, and ensure that the public and policymakers are informed about the activities of the Office of Public Guardianship.

12. Recommendations by the Office and Oversight Board

The Office and the Oversight Board should make recommendations relating to the effectiveness of the service, improvements, or other options for addressing the needs of the individuals it serves. These recommendations must be reported at least annually to the Legislature.

August 30, 2006

Washington Protection and Advocacy System

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